STATE OF INDIANA	)		IN THE ST. JOSEPH CIRCUIT COURT
COUNTY OF ST. JOSEPH	) SS: )		CAUSE NO. 71C01-1209-MI-00159
SOUTH BEND COMMON (	COUNCIL, Petitioner,	)	-FILED-
VS.		)	OCT -2 2012
SOUTH BEND CITY ADMINISTRATION,		)	St. Joseph Circuit Court
	Respondent.	)	

## **ORDER**

Petitioner appears by attorney of record, E. Spencer Walton, Jr., Respondent appears by attorney of record, Aladean DeRose and the putative Intervenor, Darryl Boykins, appears by attorney of record, Thomas Dixon, for hearing on Respondent's Motion to Stay Proceedings and the Petitioner's Response in Opposition thereto. Hearing had.

The Court finds that the United States District Court for the Northern District of Indiana assumed jurisdiction over the declaratory judgment proceedings prior to the filing of this cause action, and that both proceedings involve common questions of law and fact, common parties with similar interests, and a request for similar relief with respect to a indivisible thing, i.e. tapes of recorded conversations. The Court further finds that neither party will be substantially prejudiced by a reasonable delay in these proceedings.

In deference (or comity<sup>1</sup>) to federal jurisdiction, this Court now determines that it should maintain the *status quo ante* pending further order of this Court or pending a ruling from the United States District Court that either dismisses its action, defers its jurisdiction or grants appropriate relief to one party or another.<sup>2</sup> Over objection of the Petitioner, the Court grants a stay of proceedings on the basis of comity to the pre-existing jurisdiction of the United States District Court for the Northern District of Indiana.

<sup>&</sup>quot;Comity" is "a willingness to grant a privilege, not as a matter of right, but out of deference and good will. Its primary value is to promote uniformity of decision by discouraging repeated litigation of the same question."

Kentner v. Indiana Public Employers' Plan, Inc., 852 N.E.2d 565,575 (Ind.App.2006) [citing Am. Econ. Ins. Co. v. Felts, 759 N.E.2d 649, 6601 (Ind. App. 2001)]. As a matter of comity and discretion, a state court may stay its proceedings pending the outcome of federal litigation. Young v. Herald, 209 N.E.2d 525, 527, 138 Ind. App. 454, 457 (1965).

Where one court acquires jurisdiction over a specific property or res, the court acquiring latter jurisdiction should stay its proceeding. Young, 209 N.E.2d at 527, 138 Ind. App. at 457; Covered Bridge Homeowners Ass'n, Inc. v. Town of Sellersburg, 971 N.E.2d 1222, 1229-30 (Ind. App. 2012) [applying the "first-in-time" principle with respect to administrative proceedings before separate governmental entities]. In this matter, the United States District Court for the Northern District of Indiana acquired jurisdiction on August 30, 2012, the cause of action pending in the St. Joseph Circuit Court was not filed until September 14, 2012.

Status hearing is now scheduled for December 3, 2012, at 10:00 A.M. At that hearing, depending on the status of the federal cause(s) of action and other procedural matters, this Court may vacate the stay and schedule an evidentiary hearing, may continue the stay in force and effect, or may grant other appropriate relief. The Court also defers hearing on the motion to intervene filed by Darryl Boykins until that date and time. Counsel for the parties and the putative intervenor are advised of the status hearing date in open court and acknowledge oral notice of hearing.

The City makes an oral motion to enlarge the time to file an answer or other responsive pleadings. That motion is granted over objection. The City is granted until October 15, 2012, to file an answer or other appropriate response to the Petitioner's motion to compel.

Signed on the date filemarked hereon.

Hon, Michael G. Gotsch

Judge, St. Joseph Circuit Court

- Miliand. Willed

Distribution:

E. Spencer Walton, Jr., Esq. Aladean DeRose, Esq. Thomas Dixon, Esq. File/RJO (2)